

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:04-CR-00047-F-1
No. 7:14-CV-00050-F

THOMAS NEIL PICKETT,)
Petitioner)
)
v.) ORDER
)
UNITED STATES OF AMERICA,)
Respondent.)

This matter is before the court on Thomas Neil Pickett's Motion to Correct a Clerical Error [DE-198]. In his motion, Pickett argues that he should be released immediately because the Probation Officer made a clerical error in his Presentence Report when he stated that Pickett was found guilty of conspiracy to distribute 500 grams of cocaine base.

In *United States v. Winestock*, 340 F.3d 200 (4th Cir. 2003), the Fourth Circuit held:

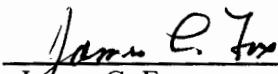
[A] motion directly attacking the prisoner's conviction or sentence will usually amount to a successive application, while a motion seeking a remedy for some defect in the collateral review process will generally be deemed a proper motion to reconsider. Thus, a brand-new, free-standing allegation of constitutional error in the underlying criminal judgment will virtually always implicate the rules governing successive applications. Similarly, new legal arguments or proffers of additional evidence will usually signify that the prisoner is not seeking relief available under Rule 60(b) but is instead continuing his collateral attack on his conviction or sentence.

Id. at 207 (internal citation omitted). The court finds that the instant motion is a "second or successive" motion under § 2255. The court further finds that Pickett has not shown that he has obtained permission from the Fourth Circuit Court of Appeals to file the motion. *See* 28 U.S.C. § 2255(h) ("A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals[.]"). For this reason, Pickett's Motion to Correct a

Clerical Error [DE-198] is DISMISSED without prejudice. The court concludes that Pickett has not made the requisite showing to support a certificate of appealability. Therefore, a certificate of appealability is DENIED.

SO ORDERED.

This the 25th day of August, 2014.



James C. Fox
Senior United States District Judge